

STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

Illinois Commerce Commission	:	
On Its Own Motion	:	
-vs-	:	01-0705
Northern Illinois Gas Company	:	
	:	
Reconciliation of revenues collected under	:	
gas adjustment charges with actual costs	:	
prudently incurred.	:	
Illinois Commerce Commission	:	
On Its Own Motion	:	02-0067
-vs-	:	On Reopening
Northern Illinois Gas Company	:	
d/b/a NICOR Gas Company	:	
	:	
Proceeding to review Rider 4, Gas cost,	:	
pursuant to Section 9-244(c) of the Public	:	
Utilities Act.	:	
Illinois Commerce Commission	:	
On Its Own Motion	:	
-vs-	:	02-0725
	:	
Northern Illinois Gas Company	:	
d/b/a NICOR Gas Company	:	
	:	
Reconciliation of revenues collected under	:	(Consolidated)
gas adjustment charges with actual costs	:	
prudently incurred.	:	

**RESPONSE TO NICOR GAS' MOTION TO STRIKE  
STAFF WITNESS TESTIMONY CONCERNING NICOR GAS'  
2% STORAGE FACTOR ADJUSTMENT**

NOW COMES the Staff of the Illinois Commerce Commission ("Staff"), through its attorneys, and pursuant to 83 Ill. Adm. Code 200.160 files its Response to Nicor Gas' Motion to Strike Staff Witness Testimony Concerning

Nicor Gas' 2% Storage Factor Adjustment ("Motion") in the above-captioned proceeding.

Staff's 2% Storage Factor Adjustment is appropriate and consistent with the scope of these consolidated dockets. The Second Interim Order reopened Docket No. 02-0067 and consolidated it with the PGA dockets from 2001 and 2002. The Order explicitly stated that if necessary, Dockets 99-0481 and 00-718, the 1999 and 2000 PGA dockets, will be the reopened for the limited purpose of entering Amendatory Orders that reflect the findings in the reopened consolidated dockets. (2<sup>nd</sup> Interim Order, p. 6 December 17, 2002) In order to determine the appropriateness of the adjustment, it is necessary to consider the purpose of this consolidated proceeding and the context in which it is taking place.

On June 27, 2002, after hearings had been concluded and the record marked 'Heard and Taken', Citizens Utility Board ("CUB") filed a Motion to Reopen the Record in Docket 02-0067, stating that it had obtained information that Nicor had not supplied the Illinois Commerce Commission ("Commission") and parties with complete and accurate information. (Motion to Reopen the Record, p. 1 June 27, 2002) CUB's Motion was based upon a facsimile, alleging that Nicor had withheld critical information and submitted misleading testimony, that CUB had received from an anonymous Nicor employee. (Id.)

The 2<sup>nd</sup> Interim Order was issued in response to the Joint Motion to Reopen the Record and Expand the Scope of the Proceeding, filed December 10, 2002. The 2<sup>nd</sup> Interim Order quotes the list of issues provided in the Joint

Motion. The list was not presented as an all-inclusive list but rather, the Joint Motion stated that “currently, Staff’s analysis focuses on issues that include, but are not limited to the following...” (2<sup>nd</sup> Interim Order, p. 4) It was noted that the issues would impact the 1999, 2000, 2001 and 2002 PGA dockets in addition to Docket 02-0067 and that refunds should be treated in a manner that is uniform and complete. (Id.) In the ordering paragraphs, the Commission stated that it would examine any issues that it deems appropriate in light of new information raised in the current docket. (Id., at 6) The 2<sup>nd</sup> Interim Order also states that it was not the Commission’s intention to re-litigate issues resolved in Dockets 99-0481 and 00-0718.

Staff’s 2% adjustment, as it relates to Dockets 99-0481 and 00-0718, comes squarely within the scope of the proceeding as defined in the 2<sup>nd</sup> Interim Order. The 2% adjustment is based upon new information discovered during the course of this docket. (Staff Ex. 8.0, p. 5) The accounting for gas injected into storage and unavailable for withdrawal was not addressed in Dockets 99-0481 or 00-0718. The information relied upon is new information brought to light in discovery during this proceeding. Thus, Staff is not seeking to re-litigate issues already ruled upon in the 1999 or 2000 PGA dockets. During review of workpapers provided by Nicor in October of 2003, Staff became aware of a report that demonstrated that reported volumes of gas withdrawn had been increased by a 2% factor. (Staff Ex. 8.0, p. 5) This information was only contained in what has been described as a second tier report, as opposed to Nicor’s monthly PGA report filed with the Commission. (Id., at 6) Prior to

reviewing the 2<sup>nd</sup> tier report, Staff was not aware that Nicor did not report the actual volumes of gas withdrawn in its monthly PGA report, but rather increased the actual volumes by 2 %. (Id., pp. 5-7)

Nicor should not be allowed to characterize a situation in which it failed to provide this information as a situation where issues have already been litigated. Further, this proceeding includes the 2001 and 2002 PGA dockets for which there has been no final reconciliation of the PGA.

Neither the Joint Motion nor the 2<sup>nd</sup> Interim Order alter the scope of Dockets 01-0705 and 02-0725. Those dockets were initiated to reconcile the revenues collected under the gas adjustment charges with actual costs prudently incurred. The sole purpose of these proceedings is to audit the PGA costs and revenues from 2001 and 2002. All issues for the 2001 and 2002 PGAs must be determined in this proceeding. Those issues are determined under the Commission's PGA rule (83 Ill. Adm. Code 525).

A regulated utility is allowed only certain costs in accordance with the Commission's PGA rule. (83 Ill. Adm. Code 525) In other words, just because a Company is incurring a cost that it is not recovering through base rates, does not mean the Company may flow the cost through the PGA. Specifically, Part 525 defines or limits recoverable costs to four specific categories. (Id., at 525.40(a)) Certain costs may only be recovered in base rates. For example, the costs of operating a company owned storage field are recovered in base rates. Storage gas not available for withdrawal is another example of a cost that may only be recovered in base rates.

It is irrelevant that Staff does not contend that the costs related to the 2% factor are unreasonable. As stated in Staff's testimony, these costs are recoverable in base rates. However, Nicor is not recovering the costs in base rates, but rather, it is running them through the PGA. (Staff Ex. 8.0, p. 6) Costs that may be included in the gas charge are defined and limited by the PGA rule. The cost of gas estimated to be withdrawn from storage during the base period is included in the gas charge, but the cost of gas injected into storage and unavailable for withdrawal is not a permissible cost to be included in the PGA gas charge. (Id., at 7)

Neither is the fact that Nicor has been improperly accounting for the cost of gas injected into storage and unavailable for withdrawal for a long period of time a plausible argument for allowing the treatment. If Nicor's recovery is improper under the PGA rule, then the Commission should order Nicor to correct its procedures to comply with Part 525 at its earliest opportunity. Dockets 99-0481, 00-718, 01-0705, and 02-0725 were initiated for the Commission to review and reconcile Nicor's 1999, 2000, 2001 and 2002 PGA costs and revenues. It is appropriate to correct all improprieties in those costs and revenues in these dockets.

Nicor's testimony regarding discussions with Staff about the 2% adjustment is not un rebutted. Staff has denied that the accounting treatment of the 2% adjustment was specifically raised with Staff. Rather Nicor had general discussions about Nicor's lost gas problem. (Staff Ex. 8.0, p. 18) While the words '2% storage factor' are indeed typed on the first page of a Nicor

presentation to Staff, (Nicor Ex. 9.0, App. B) there is no indication in that document that the 2% storage factor or the fact that it was being included in Nicor PGA costs was discussed at the presentation. Staff has denied that there was a discussion about PGA cost recovery. Thus, this is a contested issue. The Commission should receive the evidence presented and make a determination on the merits of Staff's adjustment.

Finally, Nicor's reliance on *Business & Professional People for the Public Interest v. Illinois Commerce Commission*, 136 Ill.2d 192, 226, 555 N.E.2d 693, 708 (1989) is misplaced. Staff is not advocating a change in Commission policy. Staff is advocating that Nicor's PGA costs and revenues be reconciled consistent with the PGA rules. The PGA rules were properly adopted by the Commission in Docket 94-0403 (Order entered August 23, 1995, effective November 1, 1995). The fact that Nicor has been improperly recovering these costs for a number of years does not create a Commission practice. Staff's testimony states that Staff was not aware that the Company was flowing the 2% storage factor through the PGA. Nicor has not identified any proceeding in which the Commission sanctioned flowing the cost of gas injected into storage and unavailable for withdrawal through the PGA. Nicor's argument that it "traditionally recovers" this cost through the PGA is nonsensical. The PGA is statutorily authorized for a limited purpose. Cost recovery is strictly limited and defined by the PGA rules. Repeatedly improperly including certain costs in the PGA over a number of years – or decades - does not affect the permissibility of flowing those costs through the PGA. Only a change of the law – either by statute or rule - would effect a

change in the permissibility of flowing costs through the PGA. Further, the Commission has never sanctioned Nicor's "tradition." In fact, the mechanics for including these costs with Company withdrawals was only apparent on a 2<sup>nd</sup> tier workpaper not normally provided to Staff. It was only through the intense discovery which became a part of this unusual docket that Staff discovered that Nicor has been improperly flowing these costs through the PGA. Thus, the Staff's 2% adjustment is appropriate for each of the 1999, 2000, 2001, and 2002 PGA dockets.

WHEREFORE, for the foregoing reasons, the Staff of the Illinois Commerce Commission respectfully requests that Nicor's Motion to Strike Staff Witness Testimony Concerning Nicor Gas' 2% Storage Factor Adjustment be denied.

Respectfully submitted,



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VERIFICATION

I, Steven R. Knepler, being first duly sworn, depose and state that I am an accountant in the Financial Analysis Division of the Illinois Commerce Commission; that I have read the foregoing Response to Nicor Gas' Motion to Strike Staff Witness Testimony Concerning Nicor Gas' 2% Storage Factor Adjustment and know the contents thereof; and that the statements contained in the Response are true, correct to the best of my knowledge, information and belief.

  
Steven K. Knepler  
Illinois Commerce Commission

Subscribed and sworn to before me  
this 1st day of April, 2004.

  
Notary Public

